

SECOND REGULAR SESSION

# SENATE BILL NO. 609

97TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR RUPP.

Pre-filed December 6, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

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## AN ACT

To repeal sections 379.011 and 379.012, RSMo, and to enact in lieu thereof two new sections relating to providing certain insurance documents through electronic means.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 379.011 and 379.012, RSMo, are repealed and two new  
2 sections enacted in lieu thereof, to be known as sections 379.011 and 379.012, to  
3 read as follows:

379.011. 1. As used in this section, the following terms mean:

2 (1) "Delivered by electronic means", includes delivery to an electronic mail  
3 address at which a party has consented to receive notices or documents, or  
4 posting on an electronic network or site accessible via the internet, mobile  
5 application, computer, mobile device, tablet, or any other electronic device,  
6 together with a separate notice to a party directed to the electronic mail address  
7 at which the party has consented to receive notice of the posting;

8 (2) "Party", any recipient of any notice or document required as part of an  
9 insurance transaction, including but not limited to an applicant, an insured or a  
10 policyholder.

11 2. Subject to subsection 3 of this section, any notice to a party or any  
12 other document required under applicable law in an insurance transaction or that  
13 is to serve as evidence of insurance coverage may be delivered, stored, and  
14 presented by electronic means so long as it meets the requirements of sections  
15 432.200 to 432.295. Delivery of a notice or document in accordance with this  
16 subsection shall be considered equivalent to any delivery method required under  
17 applicable law, including delivery by first class mail, first class mail postage  
18 prepaid, certified mail, or certificate of mailing.

19           3. A notice or document may be delivered by electronic means by an  
20 insurer to a party under this subsection if:

21           (1) The party has affirmatively consented to that method of delivery and  
22 has not withdrawn the consent;

23           (2) The party, before giving consent, is provided with a clear and  
24 conspicuous statement informing the party of:

25           (a) Any right or option to have the notice or document provided in paper  
26 or another nonelectronic form at no additional cost;

27           (b) The right of party to withdraw consent to have a notice or document  
28 delivered by electronic means;

29           (c) Whether the party's consent applies only to the particular transaction  
30 as to which the notice or document must be given or to identified categories of  
31 notices or documents that may be delivered by electronic means during the course  
32 of the parties' relationship;

33           (d) The means, after consent is given, by which a party may obtain a  
34 paper copy of a notice or document delivered by electronic means at no additional  
35 cost; and

36           (e) The procedure a party must follow to withdraw consent to have a  
37 notice or document delivered by electronic means and to update information  
38 needed to contact the party electronically;

39           (3) The party, before giving consent, is provided with a statement of the  
40 hardware and software requirements for access to and retention of a notice or  
41 document delivered by electronic means and consents electronically, and confirms  
42 consent electronically, in a manner that reasonably demonstrates that the party  
43 can access information in the electronic form that will be used for notices or  
44 documents delivered by electronic means as to which the party has given consent;  
45 and

46           (4) After consent of the party is given, the insurer, in the event a change  
47 in the hardware or software requirements needed to access or retain a notice or  
48 document delivered in electronic means creates a material risk that the party will  
49 not be able to access or retain a subsequent notice or document to which the  
50 consent applies:

51           (a) Provides the party with a statement of the revised hardware and  
52 software requirements for access to and retention of a notice or document  
53 delivered by electronic means and of the right of the party to withdraw consent  
54 pursuant to paragraph (b) of subdivision (2) of this subsection; and

55 (b) Complies with subdivision (2) of this subsection.

56 4. This section does not affect requirements relating to content or timing  
57 of any notice or document required under applicable law. If any provision of  
58 applicable law requiring a notice or document to be provided to a party expressly  
59 requires verification or acknowledgment of receipt of the notice or document, the  
60 notice or document may be delivered by electronic means only if the method used  
61 provides for verification or acknowledgment of receipt. Absent verification or  
62 acknowledgment of receipt of the initial notice or document on the part of the  
63 party, the insurer shall send two subsequent notices or documents at intervals  
64 of five business days. The legal effectiveness, validity, or enforceability of any  
65 contract or policy of insurance executed by a party may not be made contingent  
66 upon obtaining electronic consent or confirmation of consent of the party in  
67 accordance with subdivision (3) of subsection 3 of this section.

68 5. A withdrawal of consent by a party does not affect the legal  
69 effectiveness, validity, or enforceability of a notice or document delivered by  
70 electronic means to the party before the withdrawal of consent is effective. A  
71 withdrawal of consent by a party is effective within thirty days after receipt of  
72 the withdrawal by the insurer. Failure by an insurer to comply with subdivision  
73 (4) of subsection 3 of this section may be treated, at the election of the party, as  
74 a withdrawal of consent for purposes of this section.

75 6. This section does not apply to a notice or document delivered by an  
76 insurer in an electronic form before August 28, 2013, to a party who, before that  
77 date, has consented to receive notices or documents in an electronic form  
78 otherwise allowed by law. If the consent of a party to receive certain notices or  
79 documents in an electronic form is on file with an insurer before August 28, 2013,  
80 and pursuant to this section, an insurer intends to deliver additional notices or  
81 documents to such party in an electronic form, then prior to delivering such  
82 additional notices or documents electronically, the insurer shall notify the party  
83 of:

84 (1) The notices or documents that may be delivered by electronic means  
85 under this section that were not previously delivered electronically; and

86 (2) The party's right to withdraw consent to have notices or documents  
87 delivered by electronic means.

88 7. A party who does not consent to delivery of notices or documents under  
89 subsection 3 of this section, or who withdraws their consent, shall not be subject  
90 to any additional fees or costs for having notices or documents provided or made

91 available to them in paper or another nonelectronic form.

92           8. If any provision of applicable law requires a signature or notice or  
93 document to be notarized, acknowledged, verified, or made under oath, the  
94 requirement is satisfied if the electronic signature of the person authorized to  
95 perform those acts, together with all other information required to be included by  
96 the provision, is attached to or logically associated with the signature, notice, or  
97 document.

98           9. This section may not be construed to modify, limit, or supercede the  
99 provisions of sections **354.442, 376.1450, or 432.200 to 432.295. The**  
100 **provisions of this section shall apply to notices and documents issued**  
101 **by insurers organized under chapter 379 or 380 and to notices and**  
102 **documents relating to life insurance products issued by insurers**  
103 **organized under chapter 376.**

104           10. Nothing in this section shall prevent an insurer from offering a  
105 discount to an insured who elects to receive notices and documents electronically  
106 in accordance with this section.

          379.012. 1. In addition to and notwithstanding any other provisions or  
2 requirements of section 379.011 to the contrary, insurance policy forms and  
3 endorsements for property insurance as described in subdivisions (1), (2), (3), and  
4 (5) of subsection 1 of section 379.010 issued or renewed in this state, or covering  
5 risks in this state, which do not contain personally identifiable information, may  
6 be made available electronically on the insurer's website in lieu of mailing or  
7 delivering a paper copy of policy forms and endorsements to an insured. **Any**  
8 **insurer, including any insurer organized under chapter 380, issuing any**  
9 **insurance of the types described in this section may deliver policy**  
10 **forms and endorsements in the manner prescribed under this section.**

11           2. If the insurer elects to make such insurance policy forms and  
12 endorsements available electronically on the insurer's website in lieu of mailing  
13 or delivering a paper copy to the insured, it shall comply with all the following  
14 conditions with respect to such policy forms and endorsements:

15           (1) The policy forms and endorsements issued or sold in this state shall  
16 be easily and publicly accessible on the insurer's website and remain that way for  
17 as long as the policy form or endorsement is in force or actively sold in this state;

18           (2) The insurer shall retain and store the policy forms and endorsements  
19 after they are withdrawn from use or replaced with other policy forms and  
20 endorsements for a period of five years and make them available to insureds and

21 former insureds upon request and at no cost;

22 (3) The policy forms and endorsements shall be available on the insurer's  
23 website in an electronic format that enables the insured to print and save the  
24 policy forms and endorsements using programs or applications that are widely  
25 available on the internet and free to use;

26 (4) At policy issuance and renewal, the insurer shall provide clear and  
27 conspicuous notice to the insured, in the manner it customarily communicates  
28 with an insured, that it does not intend to mail or deliver a paper copy of the  
29 policy forms or documents. The notice shall provide instructions on how the  
30 insured may access the policy forms and endorsements on the insurer's  
31 website. The insurer shall also notify the insured of their right to obtain a paper  
32 copy of the policy forms and endorsements at no cost and provide either a toll-free  
33 telephone number or the telephone number of the insured's producer by which the  
34 insured can make this request;

35 (5) At policy renewal, the insurer shall provide clear and conspicuous  
36 notice to the insured, in the manner it customarily communicates with an  
37 insured, of any changes which have been made to the policy forms or  
38 endorsements since the prior coverage period. Such notice shall be made in  
39 accordance with the requirements of subdivision (4) of this subsection; and

40 (6) On each declarations page, or similar coverage summary document,  
41 issued to an insured, the insurer shall clearly identify the exact policy forms and  
42 endorsements purchased by the insured, so that the insured may easily access  
43 those forms on the insurer's website.

44 3. The director may promulgate any rules necessary to implement and  
45 administer the provisions of this section. Any rule or portion of a rule, as that  
46 term is defined in section 536.010, that is created under the authority delegated  
47 in this section shall become effective only if it complies with and is subject to all  
48 of the provisions of chapter 536 and, if applicable, section 536.028. This section  
49 and chapter 536 are nonseverable and if any of the powers vested with the  
50 general assembly pursuant to chapter 536 to review, to delay the effective date,  
51 or to disapprove and annul a rule are subsequently held unconstitutional, then  
52 the grant of rulemaking authority and any rule proposed or adopted after August  
53 28, 2013, shall be invalid and void.

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